



# GENERAL STATUTES COMMISSION

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## MEMORANDUM

June 5, 2012

**TO:** Senate Judiciary I Committee  
**FROM:** General Statutes Commission  
**RE:** HB 1066 (Passing Title by Will)

### General Comments

This bill separates and puts into a more logical order the provisions applicable to where and when a will may be submitted for probate (in Chapter 28A of the General Statutes, entitled "Administration of Decedents' Estates") and the provisions applicable to the effect of probating a will upon the property of a decedent (in Chapter 31 of the General Statutes, entitled "Wills"). In addition, the bill consolidates in one section, G.S. 31-39, the provisions applicable to the effect of probate upon the rights of lien creditors and purchasers for value of a decedent's real property from the decedent's heirs at law, both for wills probated in the county where the decedent's real property is located and for wills initially probated in another county. The revisions to G.S. 31-39 eliminate from that section certain language that was confusing, archaic and vague. They also clarify the extent of the protections given lien creditors and purchasers for value from a decedent's heirs. When these protections apply, they are extended to all lien creditors and purchasers for value rather than just "innocent" purchasers for value, making these protections consistent with the current protections given to lien creditors and purchasers for value under the law governing the recording of deeds (as provided under G.S. 47-18).

### Specific Comments

**Section 1** deletes from **G.S. 28A-2A-1** the following provisions which are modified and relocated to G.S. 31-39 by Section 2 of the bill:

- A will is ineffective to pass real or personal property as against innocent purchasers for value and without notice, unless the will is probated or offered for probate within two years after the death of the testator or before the approval of the final account of a duly appointed administrator, whichever time is earlier.
- If a will is fraudulently suppressed, stolen, or destroyed, or has been lost, and an action or proceeding has been commenced within two years of the death of the testator to obtain or establish the will, the two-year time limitation set out above begins to run from the termination of the action or proceeding.

**Section 2** amends **G.S. 31-39** to clarify, modernize, modify, and consolidate the law applicable to the passing of title to property devised by a will and the rights of lien creditors and purchasers for value.

Subsection (a) continues current law in providing that a duly probated will is effective to pass real and personal property.

Subsection (b) contains the substance of the provisions deleted from current G.S. 28A-2A-1 by Section 1 of the bill and the similar provisions of current G.S. 31-39. The language has been updated. In addition, the current phrase “innocent purchasers for value” has been replaced with the phrase “lien creditors or purchasers for valuable consideration.” This change makes the protections given to lien creditors and purchasers for value from the decedent’s heirs consistent with those under the statutes on the recording of deeds, specifically G.S. 47-18. Except for that change, no substantive change is intended.

Subsection (c) clarifies that a will duly probated in one county is ineffective to pass title to real property located in any other county as against lien creditors or purchasers for valuable consideration from a decedent’s intestate heirs at law, unless a certified copy of the will is filed in the office of the clerk of superior court in the county where the real property lies within the time limit under subsection (b).

Subsection (d) restates and continues current law in providing that a conveyance made by a decedent’s heirs before the expiration of the time limit under subsection (b) becomes just as effective, once that time limit has passed, as if it had been made after that time. This provision applies unless someone brings a proceeding to probate the decedent’s will before that time expires.

**Section 3** provides for the amendments to become effective October 1, 2012, and to apply to estates of decedents dying on or after that date.